

RESOLUTION No.

35657

Authorize City Attorney to pursue a declaratory judgment action in a public records matter (Resolution)

- WHEREAS David Anderson, for The Oregonian, petitioned the Multnomah County District Attorney on November 3, 1997 to direct the City to release certain records relating to the internal investigation and discipline of Portland Police Captain Mike Garvey
- WHEREAS The Public Records Law provides that material relating to a personnel discipline action, such as the records being sought in this case, may be kept confidential unless the public interest requires disclosure in a particular case
- WHEREAS On November 14, 1997, the Multnomah County District Attorney's Office ordered the City to disclose the records being sought in the petition
- WHEREAS The Multnomah County District Attorney has previously acknowledged that the case law provides little guidance in this area and has stated that there is no way for him to know whether his opinion in this sort of case " accurately gauges the balance between the public's right to know how government business is being conducted and the privacy right of individual public employees That balance can only be finally struck by the appellate courts or the Legislative Assembly through new decisions or additional legislation "
- WHEREAS As the District Attorney in the previous similar case went on to say, "However, if this office is thought to have erred in ordering or denying disclosure in these or future disciplinary cases, the parties have a clear remedy by injunctive and declaratory action, with *review de novo*, in the Circuit Court of the state ORS 192 490 Certainly, this office would welcome any enlightenment which the courts or Legislature may provide " (Emphasis added)
- WHEREAS Capt Mike Garvey has claimed he has been harmed by information about the investigation being made public, and he has notified City officials that he intends to sue the City, and the City anticipates he may sue for a million dollars or more

- WHEREAS It is important that the public obtain all the information necessary to evaluate how one of the Police Bureau's highest ranking and highest paid officers has acted and to evaluate how the City has responded to his conduct
- WHEREAS It is equally important to provide the appropriate information at the time and in the manner that does not unnecessarily harm the officer, the City or the public interest, and that complies with all applicable legal provisions
- WHEREAS It is appropriate for the City to proceed to develop criteria for releasing or withholding personnel discipline records, and guidance from the courts will be helpful in that process

NOW THEREFORE, BE IT RESOLVED that the City Attorney is authorized to pursue an action for declaratory or injunctive relief in the Circuit Court for Multnomah County challenging the November 14, 1997 Order by the District Attorney in the matter of the November 3, 1997 petition by David Anderson, and to appeal any ruling by that court to a higher court if the City Attorney deems it advisable

Adopted by the Council, **DEC 03 1997**
Mayor Vera Katz
Jeffrey L. Rogers for November 26, 1997

BARBARA CLARK
Auditor of the City of Portland
By *Britta Olson*
Deputy

1839

Agenda No

RESOLUTION NO

35657

Title

Authorize City Attorney to file a declaratory judgment action in a public records matter
(Resolution)

INTRODUCED BY	Filed	NOV 28 1997
Mayor Vera Katz <i>Vera Katz</i>	Barbara Clark Auditor of the City of Portland	
NOTED BY COMMISSIONER	By <i>Cory Kershner</i> Deputy	
Affairs	For Meeting of _____	
Finance and Administration	ACTION TAKEN	
Safety		
Utilities		
Works		
BUREAU APPROVAL		
Bureau		
Prepared by Date Jeffrey L. Rogers br November 26, 1997		
Budget Impact Review		
Completed Not Required		
Bureau Head <i>Jeffrey L. Rogers</i>		

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS		
				YEAS	NAYS
Consent	Regular XX	Francesconi	Francesconi	✓	
NOTED BY		Hales	Hales	✓	
City Attorney		Kafoury	Kafoury	✓	
City Auditor		Sten	Sten	✓	
City Engineer		Katz	Katz	✓	